

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) Case No. 4:11CR246 CDP
)
)
JAMES C. SMITH(1),)
ANTHONY ROBINSON(11), and)
CURTIS COLE(19),)
)
Defendants.)

ORDER

This matter is before the Court on the above listed defendants' motions to sever and for separate trials. As with the other pretrial motions in this case, these motions were referred to United States Magistrate Judge Frederick R. Buckles under 28 U.S.C. § 636(b). Judge Buckles received briefs and heard argument related to the motions. He then filed his Report and Recommendation recommending that the motions be denied. Each defendant has filed objections to Judge Buckles' recommended disposition. At the final pretrial conference held on October 9, 2012, I announced my decision to deny these motions to sever. I enter this order so the record is clear, and also because defendant Cole asked that I reconsider my decision as to him. My decision remains the same, and I will deny the motions to sever.

I have conducted a *de novo* review of the motions heard by Judge Buckles.

After doing so, I conclude that none of these defendants should be severed for a separate trial. The government has now indicated that it does not intend to introduce any statements that would need to be redacted to avoid the problem set out in *Bruton v. United States*, 391 U.S. 123 (1978). Additionally, none of the defendants have shown that any co-defendant would actually testify on his behalf if called. I also conclude that the jury will be able to compartmentalize the evidence as to each defendant, and I will carefully instruct the jury about their need to do so. Finally, I do not believe that any defendant has shown that severance is required because of the possibility of antagonistic defenses. I continue to believe that Judge Buckles' analysis was correct as to all defendants, and so I will adopt it as my own.

Accordingly,

IT IS HEREBY ORDERED that the Report and Recommendation of the United States Magistrate Judge [#1004] is **SUSTAINED, ADOPTED, and INCORPORATED** herein.

IT IS FURTHER ORDERED that defendants' motions to suppress evidence obtained through electronic surveillance [## 336, 445, 909] are denied.



CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

Dated this 15th day of October, 2012.